

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CARL BARRETT,

Plaintiff,

v.

LAVERNE WALLACE, SHAWN GALLINGER,
STACEY HOEM and WILLIAM BROWN,

Defendants.

ORDER

12-cv-24-bbc

Judgment was entered in this case on October 2, 2013 following a jury trial and the return of the jury's verdict finding no liability on behalf of defendants. Now plaintiff has filed a notice of appeal along with a request for leave to proceed on appeal in forma pauperis. He has submitted a trust fund account statement for the six months preceding the filing of his appeal. In addition, plaintiff has filed a motion for preparation of the trial transcript at government expense.

Plaintiff's request for leave to proceed in forma pauperis on appeal is governed by the 1996 Prison Litigation Reform Act. This means that this court must determine first whether plaintiff's request must be denied either because he has three strikes against him under 28 U.S.C. § 1915(g) or because the appeal is not taken in good faith. Plaintiff does not have three strikes against him and I do not intend to certify that his appeal is not taken in good

faith.

However, plaintiff is required to make an initial partial payment of the filing fee that has been calculated from a certified copy of his trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal. 28 U.S.C. § 1915(a)(2). From plaintiff's trust fund account statement, I conclude that he qualifies for indigent status and assess plaintiff an initial partial payment of the \$455 fee for filing his appeal in the amount of \$18.56.

If plaintiff does not have the money to make the initial partial appeal payment in his regular account, he will have to arrange with prison authorities to pay some or all of the assessment from his release account. The only amount plaintiff must pay at this time is the \$18.56 initial partial appeal payment. Before prison officials take any portion of that amount from plaintiff's release account, they may first take from plaintiff's regular account whatever amount up to the full amount plaintiff owes. Plaintiff should show a copy of this order to prison officials to make sure they are aware they should send plaintiff's initial partial appeal payment to this court.

As to plaintiff's request for preparation of the trial transcripts, under 28 U.S.C. § 753(f), a party proceeding in forma pauperis is entitled to a free transcript only after the party files an appeal and the court determines that the appeal "is not frivolous (but presents a substantial question)." A "substantial question" within the meaning of 28 U.S.C. § 753(f) is one that is "reasonably debatable." In granting plaintiff leave to proceed in forma pauperis on his appeal, I have already concluded that the appeal is not taken in bad faith because it

was sufficiently substantive to warrant a jury trial. Plaintiff states that the focus of his appeal will be on the court's repeated denials of his motions for the court's assistance in recruiting him counsel and his pro se performance at trial. Although I see no error in the court's rulings or the jury verdict, plaintiff's points are reasonably debatable and the transcript of the trial proceedings will be necessary for the court of appeals to consider this issue. Accordingly I will grant plaintiff's motion.

ORDER

IT IS ORDERED that

1. Plaintiff Carl Barrett's request for leave to proceed in forma pauperis on appeal is GRANTED. Plaintiff may have until November 29, 2013, in which to submit a check or money order made payable to the clerk of court in the amount of \$18.56. If, by November 29, 2013, plaintiff fails to pay the initial partial payment or explain his failure to do so, then I will advise the court of appeals of his noncompliance in paying the assessment so that it may take whatever steps it deems appropriate with respect to this appeal.

2. The clerk of court is directed to insure that the court's financial records reflect plaintiff's obligation to pay the \$18.56 initial partial payment and the remainder of the \$455 fee in monthly installments.

3. Plaintiff's request for preparation of transcripts at government's expense is GRANTED. The court reporter is directed to prepare a transcript of the October 1, 2013 final pretrial conference and the October 1, 2013 trial and furnish copies to plaintiff and to

the government, with the fees to be paid by the United States, pursuant to 28 U.S.C. § 753(f).

Entered this 7th day of November, 2013.

BY THE COURT:

/d/

BARBARA B. CRABB
District Judge